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BEFORE THE ARIZONA CORPORATION CC

Arizona Corporation Commission

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COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY TO
EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY IN CASA
GRANDE, PINAL COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

**CORNMAN TWEEDY 560, LLC'S
POST-HEARING RESPONSE BRIEF**

Cornman Tweedy 560, LLC, ("Cornman Tweedy"), through counsel undersigned, hereby submits its Post-Hearing Response Brief. For the reasons set forth herein, Cornman Tweedy submits that the public interest is better served by exclusion of its property (the "Cornman Tweedy Property") from the Certificate of Convenience and Necessity ("CC&N") of Arizona Water Company ("AWC") at this time.

I. INTRODUCTION

The purpose of this remand proceeding is to consider the overall public interest underlying service to the Cornman Tweedy Property, and specifically, whether it is in the public interest to exclude the Cornman Tweedy Property from AWC's CC&N at this time. Central to the determination of these issues is whether AWC, in this water challenged area and under the circumstances presented in this case, is providing reasonable service if it is not able or not willing to provide integrated water and wastewater services.

While the scope of this proceeding is clear, AWC attempts to block the review ordered by the Arizona Corporation Commission ("Commission") by imposing the narrow standard for deleting an unconditional CC&N articulated in the case of *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983) ("*James P. Paul*"). However, this case is not a CC&N deletion proceeding in the likeness of *James P. Paul*. AWC does not possess an unconditional and vested CC&N for the Cornman Tweed Property because Decision 69722 imposed express restrictions,

1 conditions and encumbrances on the grant of authority in the form of Findings of Fact
2 100, 101, 102, 103 and 104, and Conclusions of Law 4 and 5.

3 The review in this case was ordered pursuant to A.R.S. § 40-252 which allows the
4 Commission to rescind, alter or amend any order or decision upon a showing that the
5 public interest would be served by its action. There is no mention in Decision 69722 of
6 *James P. Paul* or the application of a *James P. Paul* standard of review, and that should
7 come as no surprise. It would have been nonsensical and pointless for the Commission to
8 order a remand under a standard that would have precluded the very review that was
9 ordered. The Commission does not operate that way.

10 There is no need for water service to the Cornman Tweedy Property today or in the
11 foreseeable future. Cornman Tweedy does not want its property included in AWC's
12 CC&N for many reasons that are amply documented in the testimony and evidence in this
13 case. Chief among these reasons is that Cornman Tweedy would like the option of an
14 integrated water and wastewater provider to serve its property. The evidence is clear that
15 integrated water and wastewater utilities provide benefits that are superior to stand-alone
16 utility providers. For these reasons, Cornman Tweedy submits that it is in the public
17 interest for the Commission to act pursuant to is authority under A.R.S. § 40-252 to
18 exclude the Cornman Tweedy Property from AWC's CC&N at this time.

19 Cornman Tweedy has not attempted to address each and every argument in the post
20 hearing briefs of AWC and Utilities Division Staff ("Staff"). Cornman Tweedy's decision
21 not to address any particular argument does not signify acceptance or agreement with that
22 argument.

23 II. LEGAL ARGUMENT

24 A. *James P. Paul* is Not the Applicable Standard of Review in this Case.

25 In its Post-Hearing Brief, AWC argues that "[a]s a matter of law, *James P. Paul*
26 controls here."¹ However, Decision 69722 makes no mention of *James P. Paul* and, in
27 fact, the application of a *James P. Paul* standard of review would preclude the very
28

¹ AWC Post-Hearing Brief at 15-16.

review—broad in scope—that the Commission expressly ordered. Moreover, the facts of this case are easily distinguishable from *James P. Paul* and it would be inappropriate to apply the *James P. Paul* standard of review because it would block the unambiguous directive of the Commission. The review ordered by the Commission in this case is to be conducted pursuant to A.R.S. § 40-252, as specified in Decision 69722, which authorizes the Commission “at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order of decision made by it.” The Arizona Supreme Court explains in *Arizona Corporation Commission v. Arizona Water Company*, 111 Ariz. 74, 523 P.2d 505 (1974) (“*Arizona Water Company*”) that in matters which are subject to an A.R.S. § 40-252 review, the Commission must “act upon a showing that the public interest would be served by its action.”² Thus, the Commission may act pursuant to A.R.S. § 40-252 to exclude the Cornman Tweedy Property from AWC’s CC&N if it determines, based upon the evidence, that the public interest would be served by its action.

1. **Decision 69722 Makes No Mention of the *James P. Paul* Standard of Review nor is the Application of such a Standard Consistent with the Commission’s Directives in Decision 69722.**

In Decision 69722, the Commission directed a “[r]eopening of the record in this matter pursuant to A.R.S. § 40-252...”³ The issues to be addressed in the remanded proceeding were clearly spelled out in the order:

- In Finding of Fact 100, the Commission properly observed that “[t]here may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman, and Cornman does not wish to have its property included in Arizona Water’s CC&N at this time.” The Commission then concluded that “[t]hese issues bear further examination and may have some relevance to the best interests of the area ultimately to be served.”
- In Finding of Fact 101, the Commission ruled that “[i]t is in the public interest to remand this case to the Hearing Division for further proceedings regarding whether Arizona Water should continue to hold a CC&N for the Cornman extension area at this time.”

² *Arizona Water Company*, 523 P.2d at 507.

³ Decision 69722, Conclusion of Law 4.

- In Finding of Fact 104, the Commission directed that “[t]he proceeding on remand should be broad in scope so that the Commission may develop a record to consider the overall public interest underlying service to the Cornman property that is included in the extension area granted by Decision No. 66893. By identifying these issues and requiring further proceedings, we are not prejudging this matter in any way; instead, we merely desire an opportunity to consider the broader public interests implicated herein.” (emphasis added)

It is highly significant that these provisions were added to the order through adoption of Gleason Proposed Amendment #3 dated July 19, 2007, which was offered by former Commissioner Gleason and passed by the commissioners. Unlike the remainder of Decision 69722, which was prepared by the administrative law judge, these provisions were specifically added by the commissioners and directly reflect their intent regarding the purpose and scope of this remand proceeding.

The Commissioners subsequently provided additional direction regarding the scope of this case as captured by Judge Nodes in his February 10, 2011, Procedural Order:

[T]he Commission voted to send the matter back to the Hearing Division for further proceedings to determine “whether a public service corporation, like Arizona Water, in this water challenged area and under the circumstances presented in this case, is providing reasonable service if it is not able or not willing to provide integrated water and wastewater services.”

Addressing Gleason Proposed Amendment #3, legal counsel for AWC made the following acknowledgement to the Commissioners at the July 24, 2007, Open Meeting where Decision 69722 was approved:

I completely agree with Mr. Kempley. Obviously, the applicant's desire here would have the ROO as submitted. You heard substantial discussion and give and take on that for hours at the last open meeting.

This is obviously, a carefully drafted and adroitly performed amendment that ties together all of the concerns that were raised. And if we untie one of the pieces of packing string, it all falls apart.

* * *

1 And Arizona Water Company, as much as it would like to have the ROO
2 entered as is, would accept this, and looks forward to working through the
3 process as the Commission would dictate under Amendment 3.⁴

4 Having told the Commissioners that AWC “looks forward to working through the
5 process as the Commission would dictate under Amendment 3,” AWC now argues that the
6 Commission cannot actually have the review it ordered in Decision 69722.
7 Notwithstanding that the Commission ordered a review under A.R.S. § 40-252, AWC
8 argues that the standard of review that applies to this case is the *James P. Paul* standard of
9 review. In that case, the Arizona Supreme Court ruled as follows:

10 Once granted, the [CC&N] confers upon its holder an exclusive right to
11 provide the relevant service for so long as the grantee can provide adequate
12 service at a reasonable rate. If a [CC&N] within our system of regulated
13 monopoly means anything, it means that its holder has the right to an
14 opportunity to adequately provide the service it was certificated to provide.
15 Only upon a showing that a certificate holder, presented with a demand for
16 service which is reasonable in the light of projected need, has failed to supply
17 such service at a reasonable cost to customers, can the Commission alter its
18 certificate. Only then would it be in the public interest to do so.⁵

19 The review that the Commissioners ordered in Decision 69722, as defined in the
20 adopted Gleason Proposed Amendment #3, was “broad in scope” and included the
21 development of “a record to consider the overall public interest underlying service to the
22 Cornman property.” Specifically, the Commissioners wanted the proceeding to address
23 the need for water service within the Cornman Tweedy Property and the relevance of the
24 fact that Cornman Tweedy does not want AWC to serve its property. Additionally, the
25 Commissioners wanted the proceeding to address “whether a public service corporation,
26 like Arizona Water, in this water challenged area and under the circumstances presented
27 in this case, is providing reasonable service if it is not able or not willing to provide
28 integrated water and wastewater services.” These issues are beyond the very narrow

⁴ Cornman Tweedy arranged for the preparation of a transcript of the July 24, 2007, Open Meeting relating to this docket. A copy of the transcript was attached as Attachment "D" to the Reply of Cornman Tweedy 560, LLC to the Response Briefs of Arizona Water Company and Utilities Division Staff filed in this docket on July 17, 2009. The quoted statements are found at page 9, line 17, through page 10, line 9, of the transcript.

⁵ *James P. Paul*, 137 Ariz. At 429, 671 P.2d at 407.

1 review that AWC advocates under *James P. Paul* which would consider only whether
2 AWC has been presented with a demand for water service and whether AWC has failed
3 to supply service at a reasonable cost.

4 AWC is playing a game of "gotcha" wherein it agreed at the July 24, 2007 Open
5 Meeting to "work through the process as the Commission would dictate under [Gleason]
6 Amendment 3" but now seeks to force a *James P. Paul* standard of review in order to
7 block the Commission's consideration of the issues which it specifically sought to address
8 in this remand proceeding. Former Commissioner Gleason, identified this disingenuous
9 tactic during an oral argument in this case on February 22, 2008, as captured by the
10 following exchange between counsel for AWC and Commissioner Gleason:

11 COM GLEASON: Now, when the Commission and when I looked at this, in each
12 of the respective parcels, since you didn't have an assured
13 water supply certificate for each of them, we should have
14 canceled the - - we should have cancelled the 66893. In other
words, you didn't meet - - you didn't meet the order.

15 MR. HIRSCH: Chairman Gleason, I remember well your position when that
16 was squared up before the Commission and was discussed.

17 COM. GLEASON: Okay.

18 MR. HIRSCH: And we disagree with that, but I remember your argument.

19 COM GLEASON: Well, my point is that at that point in time we looked at a
20 public policy decision. In other words, all these other
21 developments were going forward, and if we would have
22 denied this decision, all those other developments would have
had a problem.

23 MR. HIRSCH: That's very true. I remember the Commission discussing that.

24 COM GLEASON: So that as a Commission, we made a public policy decision at
25 that time which favored your company. In other words, you
26 were allowed to go forward with those. Now, in this particular
27 case, we have asked for a wide-ranging discussion involving
public policy more than - - more than just the Paul case.

28 So I -- I would think that it -- it is against -- and the

Commission has broad powers in public policy so that it would seem to me that in the remand case we need to have a real open discussion because we - - we have had a public policy decision at one time. Now we need to consider public policy in the remand decision.

MR. HIRSCH:

Chairman Gleason, I would agree with you if the certificate had not become final for the subject I think its 1,120 acres. I want to say 2 of the 11 sections roughly that Cornman Tweedy controls. But the decision at issue, 69722, granted all 11 sections including the areas that were - - where third parties would have suffered, as you indicated.

So our respectful legal position is that - - with due respect to the Commission's plenary authority, is without legal authority to decide anything other than whether the correct deletion issues can be proved by Cornman Tweedy in this remand proceeding, in other words, whether Arizona Water Company is - -

COM GLEASON: Yes, but that involves a public policy decision; right?

MR. HIRSCH:

It does in terms of if there is a legitimate question raised as to fitness and willingness to serve at reasonable rates [*i.e.*, the *James P. Paul* standard].

COM GLEASON: No. It's more than that. It's public policy of who is best - - as a public policy, who should serve that area.⁶

Thus, in addition to the clear and unambiguous language of Decision 69722, Commissioner Gleason was very clear in this exchange that the review he and the other commissioners ordered was broader than the very narrow *James P. Paul* review that AWC asserts is the standard to be applied in this case. Commissioner Gleason was also very clear that AWC benefited greatly when the Commission approved Decision 69722 so that AWC could proceed with water service for the parcels in the extension area other than the Cornman Tweedy Property. For example, Gleason Proposed Amendment #2 dated June 27, 2007, which was not adopted, would have denied AWC's request to extend the compliance deadline in Decision 66893 which would have voided the CC&N for the entire extension area. Having benefited from the Commission's good faith in allowing AWC to

⁶ Reporter's Transcript of Proceedings (Filed March 14, 2008) in Docket W-01445A-03-0559 at 22-24.

1 move forward with service to the majority of the extension area while reserving the right
2 to consider more fully whether the public interest is served by excluding the Cornman
3 Tweedy Property from AWC's CC&N, AWC should not be permitted to play its game of
4 "gotcha."

5 Former Commission Mayes, another signer of Decision 69722, provides additional
6 insight regarding the commissioners' intent. In Mayes Proposed Amendment No. 1,
7 which was offered but not adopted at the December 14, 2010, Open Meeting,
8 Commissioner Mayes explained:

9 In issuing a 40-252 proceeding and sending the matter back for additional
10 fact-gathering, the Commission was clearly concerned about the manner in
11 which this area would be served in the future, and with the fact that Arizona
12 Water Company appeared to no longer have a customer that desired service
within the Cornman Tweedy Property.

13 While we believe that the *Paul* case defines the conditions under which a
14 CC&N can be withdrawn from a Company after it has been granted, and that
15 a Company's CC&N, or a portion the CC&N, can only be deleted where the
16 Company is unable to provide needed service at reasonable rates, we do not
17 agree that *Paul* prevents the Commission from deleting the Cornman
Property from Arizona Water Company's CC&N in this case, where there
does not appear to be an imminent need for water service at this time.

18 The Commission has come to a settled view that integrated water and
19 wastewater systems are needed to help advance water sustainability in a state
20 that faces potentially dire water shortages in the future. We are concerned
21 about the deficiencies that exist when an area is not served by an integrated
22 water and wastewater system. It is clear from the record in this case, and
23 from the Commission's experience, that stand-alone water companies are
24 largely unable to provide effluent for re-use on turfed areas such as parks,
25 golf courses and ornamental water features, and lack the ability to engage in
effective groundwater management on the scale that is possessed by
integrated water and wastewater systems. Such practices as re-charge of
effluent and use of effluent for irrigation purposes are central to the very
notion of water sustainability.⁷

26 Unlike the Paul Water Company, which is discussed below, AWC has never held
27 a CC&N for the Cornman Tweedy Property which is free of restrictions, conditions and

28 ⁷ Mayes Proposed Amendment No. 1, filed December 13, 2010, in Docket W-01445A-03-0559 at 1.

1 encumbrances. If it did, we would not still be in this proceeding. The effect of the
2 Commission's directives as outlined in Decision 69722 is that AWC's authority with
3 respect to the Cornman Tweedy Property is dependent upon the resolution of the central
4 inquiry of this case, which is, whether AWC should continue to hold the CC&N for that
5 property. That is a critical distinction between this case and *James P. Paul*.

6 Given the broad scope of this A.R.S. § 40-252 proceeding as defined by the
7 Commission, it is no surprise that there is no mention of a *James P. Paul* standard of
8 review in Decision 69722. Certainly, there is nothing in Decision 69722 to support
9 AWC's assertion that a *James P. Paul* standard of review be applied in this case. To the
10 contrary, it is clear from the directives contained in Decision 69722 that the Commission
11 intended a review under A.R.S. § 40-252 that would permit the Commission to consider
12 "the overall public interest underlying service to the Cornman property."

13 There is one additional point that is relevant in this discussion. In its Post-Hearing
14 Brief, AWC asserts that the remand issue from the February 10, 2011, Procedural order
15 "makes this an all encompassing, precedent-setting decision that will adversely impact
16 270+ water-only certificated public service corporations."⁸ Although Cornman Tweedy
17 strongly disagrees that a decision in this case will be precedent-setting or will adversely
18 impact any water companies in Arizona, this statement by AWC acknowledges that the
19 scope of review in this case is clearly much broader than the narrow *James P. Paul*
20 standard it advocates.

21 **2. This Case is Distinguishable from *James P. Paul*.**

22 While the *James P. Paul* standard of review should not be applied in this case
23 because the Commissioners ordered a review under A.R.S. § 40-252, there is another
24 important reason why *James P. Paul* should not be applied. There are critical facts in this
25 case which distinguish it from *James P. Paul* and which render its application in this case
26 unfitting. On June 17, 1968, the Commission issued Decision 39520 in Docket U-2055
27 granting an order preliminary to James P. Paul and Betty J. Paul, a co-partnership doing

28 ⁸ AWC Post-Hearing Brief at 33, lines 13-15.

business as James P. Paul Water Company ("Paul Water Company"), for the operation of a water company in approximately two and one-half sections of land in Maricopa County. A copy of Decision 39520 is attached hereto as Attachment 1. Decision 39520 stated that "upon receipt of written approval from the Arizona State Health Department an order shall issue granting applicants herein a certificate of convenience and necessity." On September 16, 1970, Paul Water Company filed the required approval and on October 1, 1970, the Commission issued Decision 40884 granting a CC&N to Paul Water Company. A copy of Decision 40884 is attached hereto as Attachment 2. Decision 40884 included standard terms of a CC&N but no other restrictions, conditions or encumbrances on the CC&N granted to Paul Water Company. Paul Water Company held its CC&N for nearly six years until an Application and Petition to Delete was filed by Pinnacle Paradise Water Company, Inc. ("PPWC") in Docket U-2079 on August 31, 1976. In its petition, PPWC sought to delete 240 acres from the Paul Water Company CC&N and have that property added to its own CC&N. Although the Commission granted PPWC's petition, the decision was overturned on appeal by the Arizona Supreme Court.

There are several important and relevant distinctions between this case and *James P. Paul*, as discussed below.

(i) **There Were No Restrictions, Conditions or Encumbrances on the CC&N Granted to Paul Water Company whereas the Commission included Express Limitations and Encumbrances on the Authority Granted to AWC.**

AWC and Staff unfairly characterize Decisions 66893 and 69722 as granting an unconditional and perfected CC&N to AWC to serve the Cornman Tweedy Property. If that were true, we would not be in this proceeding. While Paul Water Company is an example of a water company that received an unconditional and perfected CC&N as a result of Decision 40884, AWC is certainly not. Decision 69722 included the following conditions, limitations and encumbrances applicable to AWC and the Cornman Tweedy Property:

- 1 ● Finding of Fact 100. “*There may not be a current need or necessity for water*
2 *service in the portions of the extension area that are owned by Cornman, and*
3 *Cornman does not wish to have its property included in Arizona Water’s CC&N*
4 *at this time. These issues bear further examination and may have some*
5 *relevance to the best interests of the area ultimately to be served.*” There was
6 no language in the Paul Water Company CC&N questioning whether or not
7 there was a need for water service.
- 8 ● Finding of Fact 101. “*It is in the public interest to remand this case to the*
9 *Hearing Division for further proceedings regarding whether Arizona Water*
10 *should continue to hold a CC&N for the Cornman extension area at this time.*”
11 There was no language in the Paul Water Company CC&N remanding the case
12 for further proceedings regarding whether the Paul Water Company should
13 continue to hold its CC&N.
- 14 ● Finding of Fact 102. “*As the CC&N holder, Arizona Water is entitled to*
15 *appropriate notice and an opportunity to be heard. Our subsequent proceeding*
16 *on remand will be for the purpose of considering whether the Cornman Tweedy*
17 *property should be deleted from the CC&N extension granted to Arizona Water*
18 *by Decision 66893.*” There was no language in the Paul Water Company
19 CC&N putting the utility on notice that property might be excluded from its
20 CC&N.
- 21 ● Finding of Fact 103. “*The Hearing Division should conduct further evidentiary*
22 *proceedings in this matter, including appropriate opportunities for intervention*
23 *and an appropriate opportunity for Arizona Water to be heard.*” There was no
24 language in the Paul Water Company CC&N directing a further evidentiary
25 hearing on the CC&N.
- 26 ● Finding of Fact 104. “*The proceeding on remand should be broad in scope so*
27 *that the Commission may develop a record to consider the overall public*
28 *interest underlying service to the Cornman property that is included in the*
29 *extension area granted by Decision No. 66893. By identifying these issues and*
30 *requiring further proceedings, we are not prejudging this matter in any way;*
31 *instead, we merely desire an opportunity to consider the broader public*
32 *interests implicated herein.*” There was no language in the Paul Water
33 Company CC&N regarding a proceeding on remand to develop a record to
34 further consider the public interest underlying service to the property included
35 in the CC&N

36 Unlike Paul Water Company, AWC has never held a CC&N for the Cornman
37 Tweedy property which is free of the types of restrictions, conditions and encumbrances
38 that are contained in Findings of Fact 100, 101, 102, 103 and 104, and Conclusions of

1 Law 4 and 5. The effect of these restrictions, conditions and encumbrances is that AWC's
2 authority with respect to the Cornman Tweedy Property is restricted and ultimately
3 dependent upon the resolution of central inquiry in this case, which is, whether the
4 Cornman Tweedy Property should be excluded from AWC's CC&N. In other words,
5 AWC does not hold a CC&N that is unconditional and vested.

6 (ii) **PPWC Sought to Delete Land from Paul Water**
7 **Company's CC&N to Add to its Own CC&N.**

8 Another relevant distinction between *James P. Paul* and this case is the fact that in
9 *James P. Paul*, PPWC was seeking to delete territory from Paul Water Company's CC&N
10 and add that property to PPWC's CC&N. The inquiry in this case is expressly limited to
11 whether or not it is in the public interest to exclude the Cornman Tweedy Property from
12 AWC's CC&N. In Mayes Proposed Amendment No. 1, former Commissioner Mayes
13 correctly explained the effect of excluding the Cornman Tweedy Property from AWC's
14 CC&N:

15 This order does not preclude Arizona Water Company or any other water
16 company from filing a future application to provide service in the area owned
17 by Cornman, and the Commission will analyze all the relevant public policy
18 factors at that time, including whether Arizona Water Company or another
19 prospective water company is capable of providing an integrated water and
20 wastewater solution.⁹

21 If the Commission decides to exclude the Cornman Tweedy Property from AWC's
22 CC&N at this time, any entity including AWC can apply to serve the property in the future
23 when service is needed.

24 (iii) **The Paul Water Company CC&N Was Unchallenged for**
25 **Six Years whereas AWC's Authority with respect to the**
26 **Cornman Tweedy Property has Been Challenged Virtually**
27 **Since Decision 66893 Was Issued.**

28 In *James P. Paul*, the Commission was asked to delete a vested and unconditional
CC&N from Paul Water Company, which it had held for six years, and give it to PPWC.

⁹ Mayes Proposed Amendment No. 1 prepared and docketed December 13, 2010 in Docket W-01445A-03-0559 at 2.

1 In sharp contrast, there has never been a time when AWC has held a CC&N for the
2 Cornman Tweedy Property which is free of all restrictions, conditions and encumbrances.
3 On April 6, 2004, the Commission issued Decision 66893 granting a CC&N with
4 conditions to AWC for an area which included the Cornman Tweedy Property. On April
5 7, 2005, Cornman Tweedy filed a letter in the docket asserting that Decision 66893 was
6 null and void because AWC had failed to satisfy the conditions by the April 6, 2005
7 deadline. The letter further stated that Cornman Tweedy did not desire to have its property
8 included in the Extension Area, that Cornman Tweedy had requested water utility service
9 from Picacho Water Company, and that Cornman Tweedy would prefer to receive
10 integrated water and wastewater service from Picacho Water Company and Picacho Sewer
11 Company for reasons of cost, convenience, timing, avoidance of confusion, and avoidance
12 of unnecessary duplication of facilities. Since filing the April 2005 letter up to and
13 including this date, Cornman Tweedy has continuously endeavored to have its property
14 excluded from AWC's CC&N.

15 Similarly, Cornman Tweedy is the successor-in-interest to approximately 649 acres
16 previously owned by the Dermer Family Trust. The Dermer Family Trust docketed a letter
17 dated April 21, 2004, stating that due to the illness and death of the trust's principal, the
18 Dermer Family Trust was not aware of AWC's application, did not receive notice of the
19 application, and did not want the trust's 649 acres included in AWC's CC&N. Again, since
20 filing the April 2004 letter up to and including this date, the Dermer Family Trust and
21 Cornman Tweedy thereafter have continuously endeavored to have the Dermer Family
22 Trust property excluded from AWC's CC&N. Obviously, the facts of *James P. Paul* are
23 very different.

24 Cornman Tweedy would add also that since it filed its Motion to Intervene in this
25 docket on May 19, 2005, AWC has had notice that the Cornman Tweedy Property could
26 be excluded from its CC&N. That is another distinguishing factor between this case and
27 *James P. Paul*.
28

1 (iv) **There is No Need for Water Service to the Cornman**
2 **Tweedy Property.**

3 Unlike *James P. Paul*, there is no need and necessity or current request for water
4 service to the Cornman Tweedy Property. However, in its Application and Petition to
5 Delete, PPWC informed the Commission that the developer was "planning to develop the
6 Property ... in the near future" and the petition was supported by requests for service from
7 the various landowners whose properties were included in the petition. In sharp contrast,
8 the evidence is uncontroverted that water service is not needed at the Cornman Tweedy
9 Property, and much of Cornman Tweedy's pre-filed testimony addresses this point.

10 (v) **The Paul Water Company CC&N Deletion Was filed by**
11 **PPWC in a Separate Docket whereas this Case has been**
12 **One Continuous Docket.**

13 The Application and Petition to Delete filed by PPWC was filed in a new Docket
14 U-2079 and not Docket U-2055 which was the docket for Paul Water Company's CC&N
15 application. In contrast, this case has been one continuous proceeding regarding the area
16 covered in Decision 66893. It is significant that Decision 69722: (i) remanded the case
17 pursuant to A.R.S. § 40-252 within the same docket; (ii) acknowledged that the previous
18 proceeding had been limited to relatively narrow issues; (iii) put AWC on notice that the
19 Cornman Tweedy Property could be deleted from the CC&N area covered by Decision
20 66893; and (iv) directed that this remand proceeding be "broad in scope so that the
21 Commission may develop a record to consider the overall public interest underlying
22 service to the Cornman property." This remand proceeding, as ordered by Decision 69722,
23 is a further continuation of Docket No. W-01445A-03-0559.

24 3. **The Review Ordered by the Commission under A.R.S. § 40-252**
25 **in this Case is Akin to the Review Conducted in *Arizona***
26 ***Corporation Commission v. Arizona Water Company.***

27 The Arizona Supreme Court specifically distinguished *James P. Paul* from another
28 case which is more applicable to this case. In *Arizona Corporation Commission v. Arizona*
Water Company, 111 Ariz. 74, 523 P.2d 505 (1974), AWC and R.J. Fernandez (doing
business as Holiday Forest Water Company) filed competing applications for a CC&N to

1 supply water to a half section of land that was undergoing residential development. AWC
2 was granted the CC&N and Fernandez filed for reconsideration. In the ensuing remand
3 proceeding, the Commission rescinded AWC's CC&N and gave it to Fernandez. AWC
4 appealed, the Superior Court vacated the Commission's action, and the Court of Appeals
5 affirmed, holding that "evidence that the public interest would best be served by the
6 certification of [the competitor] in place of the Arizona Water Company is insubstantial as
7 opposed to the evidence offered by the Arizona Water Company and, therefore . . . the
8 record clearly supports the Superior Court's conclusions." The Arizona Supreme Court
9 quoted this language in *James P. Paul*, and then distinguished *Arizona Water Company*
10 from *James P. Paul*, stating:

11 Arizona Water Co. is distinguishable because it presented a challenge to the
12 Commission's initial grant of a certificate of convenience and necessity. Where a
13 request for a certificate of convenience and necessity is made in the first instance,
14 the public interest is determined by comparing the capabilities and qualifications of
15 competitors vying for the exclusive right to provide the relevant service. The
16 amounts of time and money competitors must spend (at the consumers' ultimate
17 expense) to provide service become primary determinants of the public interest.
18 But the instant case did not involve a request for certification in the first instance.
19 Instead, it involved a request for a deletion in a certificate issued some seven years
20 earlier. Where a public service corporation holds a certificate for a given area, the
21 public interest requires that that corporation be allowed to retain its certificate until
22 it is unable or unwilling to provide needed service at a reasonable rate.

23 The *Arizona Water Company* case affirmed that the Commission may consider the
24 full panoply of public interest issues when considering an initial grant of a CC&N. The
25 review in this case was ordered pursuant to A.R.S. § 40-252 which allows the Commission
26 to rescind, alter or amend any order or decision upon a showing that the public interest
27 would be served by its action. The scope of the review that has been directed by the
28 Commission in this case is clearly more like the review that was conducted in *Arizona*
Water Company.

1 **B. AWC Does Not Hold an Unconditional CC&N for the Cornman**
2 **Tweedy Property.**

3 AWC and Staff characterize Decisions 66893 and 69722 as granting an
4 unconditional and perfected CC&N to AWC to serve the Cornman Tweedy Property.¹⁰
5 Cornman Tweedy might be inclined to agree had the Commission issued Decision 69722
6 without Findings of Fact 100, 101, 102, 103 and 104, and without Conclusions of Law 4
7 and 5, and without the Ordering Paragraphs at page 20, lines 26-28, and page 21, lines 1-
8 4. These provisions, each and every one of which was specifically added to Decision
9 69722 by the adopted Gleason Proposed Amendment #3, cannot selectively be read out of
10 the order. In fact, these provisions should be given greater deference because they were
11 added by the Commissioners themselves, as opposed to the recommended opinion and
12 order which they approved which was prepared by the administrative law judge.

13 Cornman Tweedy submits that the Commission's intent with respect to this
14 proceeding was clear. Thus, to the extent that there is any confusion or ambiguity in the
15 provisions of Decision 69722, it should be construed in a way which gives effect to—and
16 does not negate—the Commission's intent. As discussed in Cornman Tweedy's Opening
17 Post-Hearing Brief, Commission decisions are akin to legislative enactments so the rules
18 are construing legislative intent are instructive for this proceeding. In *Mail Boxes v.*
19 *Industrial Commission of Arizona*, 181 Ariz. 119, 888 P.2d 777 (1995), the Arizona
20 Supreme Court explained as follows:

21 The primary rule of statutory construction is to find and give effect to
22 legislative intent. *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834
23 (1990). We look first to the statute's words. *Kriz v. Buckeye Petroleum Co.*,
24 145 Ariz. 374, 377, 701 P.2d 1182, 1185 (1985). Words have their ordinary
25 meaning unless the context of the statute requires otherwise. *Carrow Co. v.*
26 *Lusby*, 167 Ariz. 18, 20, 804 P.2d 747, 749 (1991). Where language is
27 unambiguous, it is normally conclusive, absent a clearly expressed legislative
28 intent to the contrary. *Corbin v. Pickrell*, 136 Ariz. 589, 592, 667 P.2d 1304,
 1307 (1983).¹¹

¹⁰ AWC Post-Hearing Brief at 17, line 17.

¹¹ *Mail Boxes v. Industrial Commission of Arizona*, 888 P.2d 777, 779, 181 Ariz. 119 (1995).

1 Arizona courts have further held that statutory constructions which provide absurd
2 results are to be avoided. For example, in *Knight Transportation, Inc. v. Arizona*
3 *Department of Transportation*, 203 Ariz. 447, 55 P.3d 790 (App. 2002), the Arizona Court
4 of Appeals explained as follows:

5 Generally, in construing a statute, our primary purpose is to give effect to the
6 legislature's intent. *Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10, 990 P.2d
7 1055, 1057 (1999). If an ambiguity exists, we consider the statute as a whole,
8 as well as its context, subject matter, history, consequences, and purpose. *Id.*
9 at 500, ¶ 16, 990 P.2d at 1059. Further, we attempt to give a statute "a fair
10 and sensible meaning," *Walter v. Wilkinson*, 198 Ariz. 431, 432, ¶ 6, 10 P.3d
11 1218, 1219 (App. 2000), and to avoid a construction that produces an absurd
12 result. *State v. Affordable Bail Bonds*, 198 Ariz. 34, 37, ¶ 13, 6 P.3d 339,
13 342 (App. 2000). Finally, we consider a statute's meaning in relation to other
14 statutes with the same or similar purpose. *See Keenen v. Biles*, 199 Ariz.
15 266, 268, ¶ 6, 17 P.3d 111, 113 (App. 2001); *U.S. Xpress, Inc. v. Ariz. Tax*
16 *Court*, 179 Ariz. 363, 366, 879 P.2d 371, 374 (App. 1994) (related statutes
17 should be construed as if one law).¹²

18 AWC's assertion that it holds a fully vested and unconditional CC&N does not
19 reconcile with the language added to Decision 69722 by Gleason Proposed Amendment
20 #3. The authority that AWC received pursuant to Decision 69722 clearly conveyed
21 something less than a fully vested and unconditional CC&N. That authority, such as it is,
22 was subject to the restrictions, conditions and encumbrances of Findings of Fact 100, 101,
23 102, 103 and 104, and Conclusions of Law 4 and 5.

24 **C. Cornman Tweedy Does Not Bear the Burden of Proof of a Complainant**
25 **or Applicant Under A.A.C. R14-3-109(G) or James P. Paul.**

26 AWC asserts, erroneously, that "Cornman Tweedy is the applicant/complainant
27 pursuing deletion" and that pursuant to A.A.C. R14-3-109(G), Cornman Tweedy carries
28 the burden of proof.¹³ Further, AWC cites Decision 67112 from a case involving a
customer complaint filed against Mohave Electric Cooperative for the proposition that
"[i]n a Complaint proceeding, the burden of proof is on the Complainant to go forward

¹² *Knight Transportation, Inc. v. Arizona Department of Transportation*, 203 Ariz. 447, 55 P.3d 790, 795 (App. 2002).

¹³ AWC Post-Hearing Brief at 20, lines 13-15.

1 and establish, by a preponderance of the evidenced, that he has a valid complaint for which
2 relief can be granted.”¹⁴ Complaint proceedings are conducted pursuant to A.R.S. § 40-
3 246, but this is not a complaint case. Rather, this review was ordered by the Commission
4 pursuant to A.R.S. § 40-252, as set forth in Decision 69722, for the purpose of determining
5 “whether Arizona Water should continue to hold a CC&N for the Cornman extension area
6 at this time.”¹⁵ In *Arizona Water Company*, the Arizona Supreme Court explained as
7 follows:

8 By A.R.S. § 40--252, the Commission may at any time upon notice to a
9 public service corporation and after opportunity to be heard rescind, alter or
10 amend any order or decision made by it. We have said that Arizona is a
11 regulated monopoly state and that “The monopoly is tolerated only because
12 it is to be subject to vigilant and continuous regulation by the Corporation
13 Commission, and is subject to rescission, alteration or amendment at any
14 time upon proper notice when the public interest would be served by such
15 action.” *Davis v. Corporation Commission*, 96 Ariz. 215, 218, 393 P.2d 909,
16 911 (1964). The Commission therefore in rescinding its order certifying
17 the Arizona Water Company to serve the one-half section in dispute was
18 compelled to act upon a showing that the public interest would be served by
19 its action. And see *Arizona Corporation v. Tucson Insurance and Bonding*
20 *Agency*, 3 Ariz. App. 458, 415 P.2d 472, 478 (1966). (emphasis added)

21 Cornman Tweedy is not a customer of AWC, unlike the complainant in the Mohave
22 Electric Cooperative case cited by AWC.¹⁶ Rather, Cornman Tweedy is an intervenor in
23 a case wherein the Commissions has directed a review under A.R.S. § 40-252 to consider
24 “the overall public interest underlying service to the Cornman property that is included in
25 the extension area granted by Decision No. 66893.”¹⁷ In this case, the parties have
26 presented evidence to develop a record upon which the Commission may act. Pursuant to
27 Finding of Fact 100 in Decision 69722, that evidence addresses the fact that “[t]here may
28 not be a current need or necessity for water service in the portions of the extension area
that are owned by Cornman, and Cornman does not wish to have its property included in

¹⁴ AWC Post-Hearing Brief at 20, lines 21-24, citing Decision 67112, Finding of Fact 9.

¹⁵ Decision 69722, Finding of Fact 101 and Conclusions of Law 4-5.

¹⁶ Decision 67112 involved a complaint filed by a customer against Mohave Electric Cooperative alleging that the cooperative had violated the Sherman Anti-Trust Act, Arizona law and Commission rules regarding the provision of electrical service to the customer’s residence in Bullhead City.

¹⁷ Decision 69722, Finding of Fact 104.

1 Arizona Water's CC&N at this time."¹⁸ That evidence also addresses "whether a public
2 service corporation, like Arizona Water, in this water challenged area and under the
3 circumstances presented in this case, is providing reasonable service if it is not able or not
4 willing to provide integrated water and wastewater services."¹⁹

5 Under the standard for an A.R.S. § 40-252 review articulated in *Arizona Water*
6 *Company*, action taken by the Commission in this case after due consideration of the
7 evidence presented must be based "upon a showing that the public interest would be
8 served by its action." Cornman Tweedy is not a complainant and this is not a complaint
9 case. Likewise, for all of the reasons discussed above, this is not a CC&N deletion case
10 in the likeness of *James P. Paul* and the *James P. Paul* standard does not apply in this
11 case. The Commission must decide, whether it serves the public interest for AWC to
12 continue to hold a CC&N for the Cornman Tweedy Property.

13 **D. The Analysis Relevant to an Initial Grant of a CC&N is Relevant in this**
14 **Case.**

15 Citing *James P. Paul*, AWC argues that "the Arizona Supreme Court expressly
16 rejected used in a deletion proceeding of the public interest standards that are applicable
17 to the initial grant of a CC&N."²⁰ However, the analysis that is relevant in the initial grant
18 of a CC&N is appropriate in this case in order to develop the record that the Commission
19 has ordered in Decision 69722. For reasons that are discussed at length herein, this is not
20 a deletion case in the likeness of *James P. Paul* so the *James P. Paul* standard of review
21 does not apply nor does it limit the Commission's authority to conduct the A.R.S. § 40-
22 252 review that was ordered.

23 As noted in AWC's Post-Hearing Brief, "Cornman Tweedy argues that the
24 Commission has expressed a view that integrated water and wastewater providers are
25 superior to standalone providers and relies upon the Woodruff matter in support of that
26 assertion."²¹ AWC argues that the analysis relevant to an initial CC&N determination,

27 ¹⁸ Decision 69722, Finding of Fact 100.

¹⁹ February 10, 2011 Procedural Order at ____.

²⁰ AWC Post-Hearing Brief at 22, lines 17-19 (citation omitted).

²¹ AWC Post-Hearing Brief at 21, lines 6-9.

1 such as was applied in the Woodruff Water Company case, does not apply here.²²
2 However, that is the type of analysis that the Commission directed in this case. Namely,
3 “whether a public service corporation, like Arizona Water, in this water challenged area
4 and under the circumstances presented in this case, is providing reasonable service if it is
5 not able or not willing to provide integrated water and wastewater services.”²³

6 In her article entitled *Encouraging Conservation by Arizona's Private Water*
7 *Companies: A New Era of Regulation by the Arizona Corporation Commission* published
8 in the Arizona Law Review, 49 Ariz. L. Rev. 297 (2007), former Commissioner Mayes
9 discussed the Commission's preference for integrated water and wastewater utilities,
10 specifically citing the example of Woodruff Water Company and Woodruff Utility
11 Company:

12 In recent months, the Commission has issued decisions indicating a
13 preference that new subdivisions be served, where possible, by integrated
14 water and wastewater companies. These integrated utilities help to achieve
15 economies of scale, encourage conservation efforts, and facilitate the use of
16 effluent for golf course irrigation, ornamental lakes, and other water features.
17 The concept of integrated wastewater and water companies was approved by
18 the 1999 Commission Water Task Force, a working group comprised of
19 Commission Staff, the Residential Utility Consumer Office ("RUCO"),
20 ADEQ, ADWR, and water company stakeholders. Though the Task Force's
21 policy proposals have never been formally adopted by the Commission, the
22 integrated water and wastewater model has been explicitly favored in several
23 recent decisions. One of those cases involved a clash between the Arizona
24 Water Company ("AWC"), a stand-alone water utility, and a competing
25 entity that proposed to serve the area in question with an integrated water and
26 wastewater operation.

27 In *Woodruff*, the Commission was presented with a choice between two
28 water companies that wanted to serve the same 3,200 acre development
(called Sandia) in a fast growing area of Pinal County. The Commission's
decision was heavily influenced by the question of whether the CC&N
should be granted to an entity capable of utilizing effluent. Ultimately, the
Commission awarded the CC&N to Woodruff Water and Sewer Companies
over AWC. The Commission chose Woodruff despite the fact [that] AWC
was a far more experienced water provider.

²² AWC Post-Hearing Brief at 21, lines 1-2.

²³ February 10, 2011 Procedural Order at 2.

1 ***

2 Companies competing for the right to serve some of the state's fastest growing
3 areas are advantaged when they present an integrated approach to the
4 Commission, thus allowing Commissioners the opportunity to mandate the
5 use of effluent from the moment the service area is created. (footnotes
omitted).²⁴

6 Mr. Johnson, the former Director of the Commission's Utilities Division, shares
7 Commissioner Mayes' position that integrated utilities are preferred by the Commission:

8 The Commission clearly expressed its view that integrated providers are
9 superior to standalone providers where the option exists when it granted
10 CC&Ns to integrated provider Woodruff Water Company and Woodruff
11 Utility Company over a competing application by AWC (Consolidated
12 Docket Nos. W-04264A-04-0438, SW-04265A-04-0439 and W-01445A-04-
13 0755). ... I am not aware of any decision since where the Commission has
14 abandoned or backtracked from that view. In my opinion, the fact that AWC
has recently entered into collaborative agreements regarding wastewater
service is evidence that AWC believes the Commission holds this view.²⁵

15 Similarly, consideration of the need for service is also part of the analysis relevant
16 to the initial grant of a CC&N, as are the wishes of the landowner. Again, the Commission
17 directed that this proceeding should address the fact that "[t]here may not be a current
18 need or necessity for water service in the portions of the extension area that are owned by
19 Cornman, and Cornman does not wish to have its property included in Arizona Water's
20 CC&N at this time."²⁶ Clearly, the Commission intended for the scope of this proceeding
21 to be more like an initial grant of a CC&N. Because this proceeding is occurring under
22 A.R.S. § 40-252, the Commission certainly has that authority as it may "act upon a
23 showing that the public interest would be served by its action."²⁷

24 Exhibit CT-103 (Poulos Rebuttal Testimony), Exhibit 2 at 304-305.

25 Exhibit CT-110 (Johnson Rejoinder Testimony) at 19-20 (emphasis added).

26 Decision 69722, Finding of Fact 100.

27 *Arizona Water Company*, 523 P.2d at 507.

1 E. **Excluding the Cornman Tweedy Property from AWC's CC&N is in the**
2 **Public Interest and is Appropriate Under A.R.S. § 40-252.**

3 AWC argues that "an examination of the totality of the evidence presented in this
4 docket reveals that Arizona Water Company remains the fit and proper entity to hold the
5 CC&N for the Cornman Tweedy property."²⁸ To the contrary, a preponderance of the
6 evidence fully supports excluding the Cornman Tweedy Property from AWC's CC&N for
7 the reasons discussed below.

8 1. **AWC has a Long Record of Hostility toward the Efforts of Other**
9 **to Use Reclaimed Wastewater in the Areas that AWC Serves.**

10 AWC's assertion that it has "extensive experience cooperating with other utilities
11 to provide water and wastewater services in a manner that meets Arizona's statewide water
12 policy goals"²⁹ is controverted by the evidence presented in this case. For decades, AWC
13 has opposed the use of reclaimed water by others within the areas it serves. While AWC
14 asserts that the company mind-set has recently changed, its actions don't yet bear that out.
15 The fact is that the sale of effluent within AWC's CC&N competes with AWC's sale of
16 water. For example, in its lawsuit challenging the City of Casa Grande's plans to supply
17 effluent to a new power plant which would have displaced the sale of Central Arizona
18 Project water to the power plant by AWC, AWC's President Bill Garfield testified that
19 "we looked at the sources of water as roughly equivalent. Both were non-potable."³⁰ This
20 inherent perspective of effluent as competition to the sale of water is one of the serious
21 problems of stand-alone water companies versus integrated water and wastewater
22 providers.

23 While AWC may pay lip service to the beneficial use of effluent, its actions over
24 many years have shown a hostility toward the efforts of others to use effluent within the
25 areas it serves water. In *Arizona Water Company v. City of Bisbee*, 172 Ariz. 176, 836
26 P.2d 389 (App. 1991), the Arizona Court of Appeals ruled on a lawsuit brought by AWC
27 challenging the right of the City of Bisbee to deliver effluent from the City's wastewater

28 ²⁸ AWC Post-Hearing Brief at 23, lines 4-6.

²⁹ AWC Post-Hearing Brief at 27, lines 8-10.

³⁰ Hearing Transcript Vol. III at 470, lines 10-11.

1 treatment plant to Phelps Dodge in the mid-1980s for use in its copper leaching operations,
2 which were located within AWC's CC&N. AWC argued that Bisbee's delivery of effluent
3 within AWC's CC&N constituted a competing service in violation of A.R.S. §§ 9-515 and
4 9-516.³¹

5 A little more than a decade later, AWC challenged in court an agreement by the
6 City of Casa Grande to supply effluent to the Desert Basin Generating Station in Casa
7 Grande.³² Once again, like in the *City of Bisbee* case, the court ruled against AWC. AWC
8 claims that "following those dark years, 1999, 2000, 2001," it has worked with the City
9 of Casa Grande to plan for the distribution of effluent within the City.³³ However, actions
10 always speak louder than words, and this alleged new cooperative relationship has not
11 delivered any additional effluent, as evidenced by the testimony of Mr. Garfield at the
12 hearing:

13 Q. Is Arizona Water Company currently providing any effluent to any customer
14 within the City of Casa Grande?

15 A. No we are not.³⁴

16 As the sole example of a location within its service territory where AWC is
17 providing reclaimed water, AWC offers the case of Gold Canyon Sewer Company.
18 However, this is yet another example of AWC challenging the delivery of effluent by
19 another within its service area. On September 27, 1988, Gold Canyon Sewer Company
20 filed an application with the Commission for a certificate of convenience and necessity to
21 provide sewer collection and treatment service in Pinal County, Arizona.³⁵ Included in its
22 application was a request to provide reclaimed water service.³⁶ However, "[b]ecause of
23 AWC's concern that its existing water service certificate rights are jeopardized or
24

25 ³¹ *City of Bisbee*, 172 Ariz. 176, 177, 836 P.2d 389, 390.

26 ³² AWC witness Paul Walker discussed this case in footnote 16 of his whitepaper entitled *Total Water Management: Resource Conservation in the Face of Population Growth and Water Scarcity*, which was admitted as Exhibit CT-116.

27 ³³ Hearing Transcript Vol. II at 381, line 17, and 382, lines 10-12.

28 ³⁴ Hearing Transcript Vol. III at 488-489.

³⁵ Exhibit CT-125 at 1, Recital D.

³⁶ Exhibit CT-125 at 1, Recital D

1 diminished by reason of the reclaimed Water portion of the Application, [AWC]
2 intervened in the Docket and lodged its opposition to that portion of Gold Canyon's
3 Application."³⁷ In order to get its CC&N, Gold Canyon Sewer Company capitulated and
4 entered into an Agreement for the Purchase, Sale and Resale of Reclaimed Water in
5 Apache Junction, Arizona, whereby AWC became the exclusive supplier of effluent
6 within Gold Canyon Sewer Company's CC&N.³⁸

7 The Gold Canyon Sewer Company agreement clearly illuminates AWC's true
8 mind-set regarding the use of effluent within its CC&N, which is that the sale of reclaimed
9 wastewater by another utility "jeopardizes" and "diminishes" its CC&N rights. This
10 position has been seen over and over again as in the cases of the City of Bisbee and the
11 City of Casa Grande. And, the Gold Canyon Sewer Company service area is the one and
12 only place where AWC is providing effluent within its massive service area, as Mr.
13 Garfield acknowledged in his testimony:

14 Q. Okay. Is Arizona Water Company providing any effluent to any customer
15 anywhere outside of its Superstition service area where it provides effluent
16 produced by Gold Canyon Sewer Company?

17 A. Not currently.³⁹

18 AWC also touts a May 15, 2008 Settlement Agreement⁴⁰ between AWC and Global
19 Water Resources, LLC, as an example of how AWC works cooperatively with wastewater
20 providers "to deliver [reclaimed water] to customers who are able to put it to beneficial
21 use for landscape and other similar purposes."⁴¹ Section 7(a) of the Settlement
22 Agreement, which is captioned "Agreement to Cooperate," states as follows:

23 a. Global, including without limitation its subsidiary Global Water-Palo
24 Verde Utilities Company, shall enter into an agreement with Arizona
25 Water Company to supply available reclaimed water to Arizona Water
Company, if requested, to be sold and delivered by Arizona Water

26 ³⁷ Exhibit CT-125 at 2, Recital E.

27 ³⁸ See Hearing Transcript Vol. III at 475, lines 2-10.

28 ³⁹ Hearing Transcript Vol. III at 489, lines 2-6.

⁴⁰ The Settlement Agreement was admitted as Exhibit CT-126.

⁴¹ Exhibit AWC-1 (Direct Testimony of William Garfield, Remand II) at 5, lines 14-15.

Company within its CCN and Planning Area. In order to ensure that maximum efficiencies can be attained by Arizona Water Company in its deployment of potable and reclaimed water, neither Global nor Global Water-Palo Verde Utilities Company shall sell or distribute reclaimed water within Arizona Water Company's CCN or Planning Area except to Arizona Water Company, which shall be the retail provider of reclaimed water in such areas. Global Water-Palo Verde Utilities Company shall not be obligated to sell reclaimed water to Arizona Water Company in any amount in excess of the amount of reclaimed water generated in the Overlap Areas.⁴²

Although the Settlement Agreement was signed nearly eight years ago, the agreement for Global Water Resources to supply effluent to AWC for sale and delivery within AWC's CC&N and Planning Area has never been prepared or signed. Mr. Garfield conceded at the hearing that neither Global Water Resources nor any of its affiliates has ever delivered any effluent to AWC nor has AWC ever requested effluent from Global Water Resources or any of its affiliates, noting that it has not been high on AWC's priority list.⁴³ However, Mr. Garfield did acknowledged one function of Section 7(a) that appears to be operating as AWC intends:

Q. Mr. Garfield, I guess one more question. That provision 7A that we looked at, does that section prohibit Global Water or Global Water Palo Verde Utilities from selling effluent to anyone within Arizona Water Company's CC&N or its planning area?

A. That's my read, yes.⁴⁴

As another purported example of its interest in reclaimed wastewater, AWC witnesses Garfield and Schneider testified regarding a July 25, 2014, memorandum of understanding ("MOU")⁴⁵ between AWC and PERC Water Corporation ("PERC") whereby AWC could "permit, design and construct the necessary wastewater facilities in areas where Arizona Water Company is currently, or could potentially be, the water provider and where no wastewater provider currently exists."⁴⁶ Section 1(b) of the MOU

⁴² Exhibit CT-126 at 7 (emphasis added).

⁴³ Hearing Transcript Vol. III at 481, lines 15-16, and 483-484.

⁴⁴ Hearing Transcript Vol. III at 484, lines 12-17.

⁴⁵ The MOU was admitted as Exhibit CT-127.

⁴⁶ AWC-3 (Direct Testimony of Frederick Schneider, Remand II) at 14, lines 14-17; Exhibit AWC-1 (Direct Testimony of William Garfield, Remand II) at 9, lines 1-5.

1 states that "Arizona Water will notify PERC of the opportunity to join with Arizona Water
2 to provide sewer/wastewater service in a development or identified region within Arizona
3 Water's service area or an intended additional to Arizona Water's existing service area."⁴⁷
4 However, in the nearly two years since the MOU was signed, AWC has never notified
5 PERC of an opportunity to join together on a project and no drafts of any agreements in
6 furtherance of the MOU have ever been created.⁴⁸

7 The PERC MOU also contains Section 1(d) which provides that "[a]ny agreement
8 between the parties to provide sewer-wastewater service in Arizona Water's service areas
9 will provide mutually acceptable terms and conditions for PERC to deliver all or part of
10 the effluent or reclaimed water PERC produces to Arizona for direct or indirect beneficial
11 use by its customers."⁴⁹ With this provision, like Gold Canyon Sewer Company, AWC
12 has limited the ability of another entity to deliver reclaimed water within its CC&N, as
13 shown in Mr. Garfield's testimony at hearing:

14 Q. ... So as I read that provision, would Arizona Water Company be the
15 provider of effluent within Arizona Water Company's certificated areas?

16 A. I think this contemplates that, yes.⁵⁰

17 Thus, AWC has precluded yet another entity from providing reclaimed water
18 within its CC&N area under the guise of a "cooperative" agreement.

19 AWC offered as one of its witnesses Rita Pearson Maguire, the former Director of
20 the Arizona Department of Water Resources. However, before Ms. Maguire was retained
21 as a witness for AWC, she was a witness for Global Water Resources, LLC, on behalf of
22 its integrated water and wastewater providers Santa Cruz Water Company and Palo Verde
23 Utilities Company in Consolidated Docket Nos. W-01445A-06-0199, SW-03575A-05-
24 0926 and W-03576A-05-0926. In Direct Testimony filed in those dockets, and admitted
25 in this docket as CT-128, Ms. Maguire testified regarding the critical importance of the

26 ⁴⁷ Exhibit CT-127 at 1, Section 1(b).

27 ⁴⁸ Hearing Transcript Vol. III at 486, lines 4-13, and 487, lines 4-9.

28 ⁴⁹ Exhibit CT-127 at 2, Section 1(e).

⁵⁰ Hearing Transcript Vol. III at 487, lines 14-17.

1 use of reclaimed water:

2 Q. How important is the use of reclaimed water and effluent to ensuring we
3 have adequate water supplies in the future?

4 A. Using reclaimed water is critical. This is because the future development
5 and use of the state's water resources will create additional wastewater.
6 Reclaiming or reusing this wastewater has the potential to significantly
7 increase the amount of water available for potable use.

8 ***

9 Q. Has there been a movement towards exploring and implementing uses for
10 reclaimed water and effluent?

11 A. ... As the scarcity and cost of water increases, water providers will find it
12 cost-effective to invest in integrated water and wastewater systems that can
13 utilize up to 100% of the reclaimed water produced. This water can reduce
14 groundwater usage by substituting reclaimed water for use in public parks,
15 cemeteries, golf courses, and other public areas. The sooner water providers
16 and state policies promote the use of reclaimed water and wastewater, our
17 ability to meet the water needs of the state's communities will be more
18 secure.⁵¹

19 On cross examination, Ms. Maguire acknowledged her continuing agreement with
20 these prior statements from her testimony in the consolidated Global Water Resources
21 dockets, adding:

22 ... It is important to think about the context. This was with respect to Global
23 Utilities and their purple pipe concept, but also it is in the context of 2007.
24 At that point, the use of effluent in the state was only about 2 percent of the
25 state's water budget. Today, it exceeds 7 percent, and it is continuing to go
26 up because it is becoming a valuable supply.⁵²

27 At the point in time when the Cornman Tweedy Property is developed, Cornman
28 Tweedy wants utility service from integrated water and wastewater providers who
recognize and value the critical role of effluent in prudent water management. AWC has
a demonstrated track record of aggressively opposing the efforts of others to use effluent
within its service areas. AWC's purported newfound mind-set supporting the use of

⁵¹ Exhibit CT-128 (Direct Testimony of Rita Maguire) at 21, lines 13-18 and 22, lines 1-15 (emphasis added).

⁵² Hearing Transcript Vol. III at 588, lines 14-21.

1 effluent has not been demonstrated in the actions of AWC as it is only supplying effluent
2 in one small portion of its enormous service territory.

3 Through the integration of water and wastewater service, Cornman Tweedy can
4 ensure that the beneficial use and recharge of effluent will be maximized within its
5 property. Based upon its track record, this is unlikely to occur if AWC holds the water
6 CC&N for the Cornman Tweedy Property. For this reason, Cornman Tweedy does not
7 believe that AWC can provide reasonable service to its property.

8 2. **A.R.S. § 40-321 Does Not Apply in this Case and Does Not**
9 **Prohibit the Commission from Excluding the Cornman Tweedy**
10 **Property from AWC's CC&N Pursuant to A.R.S. § 40-252.**

11 AWC argues that the only statute which addresses the reasonableness or
12 unreasonableness of service is A.R.S. § 40-321 which provides that “[w]hen the
13 commission finds that the equipment, appliances, facilities or service of any public service
14 corporation, or the methods of manufacture, distribution, transmission, storage or supply
15 employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the
16 commission shall determine what is just, reasonable, safe, proper, adequate or sufficient,
17 and shall enforce its determination by order or regulation.”⁵³ However, implicit in the
18 application of A.R.S. § 40-321 is the predicate that there exists a utility which is
19 conducting its business in a way which is materially deficient.⁵⁴ The application of A.R.S.
20 § 40-321 would be nonsensical in this case because AWC is not providing service to the
21 Cornman Tweedy Property, so the predicate for application of A.R.S. § 40-321 fails.⁵⁵

22 Forcing the application of A.R.S. § 40-321 in this case is no different than forcing
23 the application of the *James P. Paul* standard of review—both are antithetical to the

24 ⁵³ AWC Post-Hearing Brief at 25, lines 9-14.

25 ⁵⁴ See *Qwest Corporation v. Kelly*, 59 P.3d 789, 204 Ariz. 25 (Ct. App. 2002) at footnote 2 (“Section 40-
321 gives the Commission the power to oversee a public service corporation's business and ensure that it
is conducting business in a safe, reasonable, and proper manner.”) (emphasis added)

26 ⁵⁵ To illustrate the absurdity of the point, AWC asserts that “[h]ere, no one has presented any evidence of
27 any improprieties, nor has any order to show cause been issued or directives issued by Staff of the
Commission requiring Arizona Water Company to take any particular actions to remedy a service issue.”
28 (AWC Post-Hearing Brief at 25-26). There is no service issue to address under A.R.S. § 40-321 because
AWC is not providing service to the Cornman Tweedy Property.

Commission's express directives as outlined in Decision 69722. Obviously, there is no mention of A.R.S. § 40-321 in Decision 69722 nor is there anything to suggest that the Commission intended for the remand to proceed under that statute. To the contrary, Decision 69722 specifically directs a review under A.R.S. § 40- 252 to determine, among other things, "whether a public service corporation, like Arizona Water, in this water challenged area and under the circumstances presented in this case, is providing reasonable service if it is not able or not willing to provide integrated water and wastewater services." And, as discussed earlier, the Arizona Supreme Court ruled in *Arizona Water Company* that in matters which are subject to A.R.S. § 40-252, the Commission must "act upon a showing that the public interest would be served by its action."⁵⁶ Thus, the Commission's authority to act in this case is not limited to relief under A.R.S. § 40-321 as AWC claims.

3. **Because AWC is Unable to Provide Integrated Water and Wastewater Service to the Cornman Tweedy Property, it cannot Provide Reasonable Service to the Property.**

AWC argues that "integration is not necessary for Arizona Water Company to provide reasonable service in a water-challenged area like the Pinal AMA."⁵⁷ However, AWC's own witness Paul Walker, perhaps at a time before he was being compensated by AWC,⁵⁸ co-authored a whitepaper admitted as Exhibit CT-116 which advocated the superiority of an integrated water and wastewater approach over services provided by stand-alone providers. In his whitepaper, Mr. Walker explained that water providers have not embraced effluent reuse and he identified one of the factors hampering a broad utilization of effluent as "[a] lack of integrated service suppliers."⁵⁹ Mr. Walker defines "integrated service suppliers" in footnote 14 as those "providing water, wastewater and recycled water service."⁶⁰ Mr. Walker continues:

⁵⁶ *Arizona Water Company*, 523 P.2d at 507.

⁵⁷ AWC Post-Hearing Brief at 28, lines 3-4.

⁵⁸ Hearing Transcript Vol. III at 622, lines 15-17.

⁵⁹ CT-116 at 6.

⁶⁰ CT-116 at 6, footnote 14.

1 Integrated service suppliers provide both water and wastewater services
2 within a region. In situations where an integrated supplier does not exist,
3 opportunities to make use of recycled water are difficult. Obviously, it is the
4 wastewater utility that collects wastewater, treats it to regulatory standards,
5 and distributes recycled water – often to the economic detriment of the water
6 utility. In some cases, water utilities have litigated over the right to distribute
7 recycled water claiming they have such a “right,” despite not owning the
8 resource. This litigation further stifles recycled water’s potential application.
9 When water and wastewater utilities are placed at odds, neither party
10 advances the use of this valuable resource.⁶¹

11 Mr. Walker was clearly referencing AWC in identifying utilities which have
12 litigated over the rights of others to distribute effluent as evidenced by footnote 16 which
13 specifically discusses the City of Casa Grande litigation. In footnote 15, Mr. Walker
14 explains further that “[t]he use of recycled water in lieu of potable water means a
15 diminished demand for the potable water produced by local water companies – reduced
16 water sales diminish the water company’s revenues.” Mr. Garfield acknowledged this
17 point in his response to a question from the judge regarding whether AWC sees the
18 delivery of effluent by a wastewater provider as competition for potable water service:
19 “we still see that as potential competition, and it can still have an impact on the company’s
20 business....”⁶²

21 In his whitepaper, Mr. Walker acknowledged the benefits of integration:

22 In addition to the technical aspects of integration, there are policy and
23 financial benefits from integration. A joint Swedish-Polish research study
24 viewed integration of water, wastewater and waste handling as part of a
25 “municipal ecology.” The study points out that the advantages of integration
26 include “combinations with the energy sector ... improved technical
27 functions, possibilities in a large organization to employ qualified staff,
28 simplification of fee collection system, and less environmental emissions and
resources depletion.”⁶³

Reclaimed water exists as the only water source experiencing an increase in
availability (9.8% and growing). The State must move aggressively to
support and mandate water recycling as a long term solution to water

⁶¹ CT-116 at 7-8 (citations omitted; emphasis added).

⁶² Hearing Transcript Vol. III at 508, lines 12-19.

⁶³ CT-116 at 8.

1 scarcity.⁶⁴

2 The benefits of recycling can also be exploited by an integrated utility
3 through common-trench construction, consistency of recycling objectives,
4 commonality of standards and economies of scale for labor.⁶⁵

5 These benefits of integration identified by Mr. Walker in his whitepaper are many
6 of the same benefits that have been identified and discussed by the Cornman Tweedy
7 witnesses in this case. On cross-examination, Mr. Walker acknowledged his agreement
8 with the foregoing statements contained in his whitepaper,⁶⁶ although he backtracked on
9 his earlier conviction that the benefits of integration can only be achieved through and
10 integrated water and wastewater provider. Mr. Walker's newly formed view that the
11 benefits of integration may not necessarily require the actual integration of water and
12 wastewater providers is based on the assertions that AWC and Global Water Resources
13 and AWC and the City of Casa Grande have made plans to work together.⁶⁷ However, as
14 the evidence in this case shows, nothing to date has materialized from those plans to work
15 together even though those plans have existed for a number of years now. Cornman
16 Tweedy would also point out that Mr. Walker never backtracked from his conviction that
17 there are many benefits from integrating water and wastewater service.

18 While AWC asserts that it "is ready, willing and able to provide wastewater service
19 in those areas where it provides water service, where there is a need for wastewater
20 service, and where there is not existing capable or certificated wastewater provider already
21 established,"⁶⁸ it acknowledges that the question of whether AWC is able or willing to
22 provide integrated water and wastewater service to the Cornman Tweedy Property is
23 largely moot because "Picacho Sewer currently holds the CC&N to provide wastewater
24 service to the Cornman Tweedy property."⁶⁹ However, Picacho Sewer Company already
25 possesses the CC&N to provide wastewater service for the Cornman Tweedy Property, so

26 ⁶⁴ CT-116 at 34.

27 ⁶⁵ CT-116 at 35.

28 ⁶⁶ See generally, Hearing Transcript Vol. III at 636-651.

⁶⁷ Hearing Transcript Vol. III at 651, lines 19-23.

⁶⁸ AWC Post-Hearing Brief at 27, lines 15-18 (emphasis added).

⁶⁹ AWC Post-Hearing Brief at 32, lines 13-14.

1 it is impossible for AWC to provide integrated water and wastewater service to the
2 Cornman Tweedy Property.

3 AWC finds fault with the way that Robson-affiliated wastewater utilities manage
4 the direct use and the storage of effluent. However, Mr. Soriano refuted AWC's assertions
5 in his Rejoinder Testimony:

6 When an acre-foot of effluent is directly delivered to a golf course, this
7 obviously avoids the pumping of an acre-foot of groundwater. However,
8 when an acre-foot of effluent is recharged in the aquifer, the volume of water
9 stored in the aquifer increases by an acre-foot and that water is available for
10 future use. Whether effluent is directly used or stored through recharge, the
11 benefit to the aquifer is the same. That is exactly the situation with respect
12 to the 522.68 acre-feet of effluent that was stored by Pima Utility Company
13 in 2014—that water has increased the stored water in the aquifer.

14 [AWC] is essentially quibbling with the timing of Robson's use of the
15 effluent storage credits that are accumulated as a result of recharging the
16 aquifer. However, the decision regarding when to use storage credits is a
17 business decision to be made by the utility. The utilities that are owned by
18 members of the Robson family are operated from a conservative business
19 perspective. Because no one can know what the future may bring, including
20 what new laws may be enacted or current laws changed, the conservative
21 decision has been made to store water in the aquifer for future use. The
22 timing of using effluent recharge storage credits is not important. What is
23 important is that effluent is recharging the aquifer. The way we see it, putting
24 money in a savings account is always a good thing. The fact that recharge
25 credits are not used in the very same year they are accrued is a red herring.⁷⁰

26 In responding to AWC's specific criticism regarding the accumulation of recharge
27 credits by Robson-affiliate Robson Ranch Quail Creek, LLC,⁷¹ Mr. Soriano explained as
28 follows:

23 Pima County is the wastewater provider for the area that is served by the
24 Quail Creek Water Company. Pima County did not have a recharge facility
25 to recharge its effluent and the effluent was being discharged to a wash.
26 Seeing that the effluent resource was going to waste, Robson funded a \$1.2
27 million upgrade to Pima County's wastewater treatment plant so that it could
28 produce high quality effluent suitable for recharge. Robson then funded and
constructed a recharge facility so that the effluent storage credits could be

⁷⁰ CT 101 (Rejoinder Testimony of Steven Soriano) at 5-6.

⁷¹ AWC Post-Hearing Brief at 28.

1 captured. Pursuant to a contract with Pima County, Robson Ranch Quail
2 Creek LLC takes effluent from the County and recharges it at the recharge
3 facility. As of December 31, 2014, Robson Ranch Quail Creek LLC had
4 recharged 16,745.22 acre-feet of effluent in the aquifer.⁷²

5 The salient point here is that customers of Quail Creek Water Company benefit
6 greatly from the recharge project because 16,745.22 acre-feet of effluent have been
7 recharged in the aquifer underlying the Quail Creek community, thereby firming up the
8 supply of groundwater upon which they rely.

9 While the Robson-affiliated utilities are not the subject of this proceeding, there is
10 ample evidence in the record which shows Robson's commitment to maximizing the
11 beneficial use of effluent. AWC simply cannot show such a commitment.

12 **4. A Decision to Exclude the Cornman Tweedy Property from**
13 **AWC's CC&N Will be Limited to this Docket and these Parties,**
14 **and it Will Not Have Broader Implications Beyond this Case.**

15 As set forth in Judge Nodes' February 10, 2011, Procedural Order, the Commission
16 voted to send this case back to the Hearing Division for further proceedings to determine
17 "whether a public service corporation, like Arizona Water, in this water challenged area
18 and under the circumstances presented in this case, is providing reasonable service if it is
19 not able or not willing to provide integrated water and wastewater services." AWC seizes
20 on the words "whether a public service corporation, like Arizona Water" in the procedural
21 order and argues that the Commission intended a general inquiry into the public interest
22 surrounding the integration of water and wastewater service in Arizona. However, this
23 argument was previously disposed of by Judge Nodes at an October 5, 2011, procedural
24 conference in this case. In a dialogue with counsel for AWC, Judge Nodes explained:

25 But the one point that I came away with based on the directive from the open
26 meeting was we don't intend this to be a broad inquiry into the state policy
27 of integration in general, that we want you, in the context of the
28 circumstances of this case, to determine whether Arizona Water is providing
reasonable service if it is not providing integrated water and wastewater
services.

⁷² CT 101 (Rejoinder Testimony of Steven Soriano) at 10, lines 5-15.

1 That was my understanding. I thought it was, that point was probably the
2 one thing the Commissioners made absolutely clear to me in my trying to
inquire exactly what they intended with regard to the motion.⁷³

3 AWC next argues that “[e]ven if the language used by the Commission is construed
4 narrowly to apply solely to Arizona Water Company..., a decision deleting the Cornman
5 Tweedy property would set a precedent that others would rely upon....⁷⁴ However, this
6 argument also lacks merit because the Commission is not subject to the judicial doctrine
7 of *stare decisis*, which obligates a court of law to follow earlier judicial decisions when
8 the same facts arise again in litigation. Rather, the Commission is always required to act
9 in the public interest, regardless of prior decisions, and the public interest is evaluated
10 based upon the facts and circumstances of each specific case. Thus, a decision by the
11 Commission to exclude the Cornman Tweedy Property from AWC’s CC&N does not bind
12 a future Commission to act in the same way in a different case.

13 AWC asserts that the remand issue from the February 10, 2011 Procedural order
14 “makes this an all encompassing, precedent-setting decision that will adversely impact
15 270+ water-only certificated public service corporations.”⁷⁵ However, despite the fact that
16 this case is now nearly 13 years old, and despite the fact that this case has come before the
17 Commission during prior open meetings, and despite the fact that AWC witness Paul
18 Walker (who has been involved in this case since at least May 2014 when he pre-filed
19 testimony) has many associations with water companies in Arizona, not to mention
20 AWC’s own lengthy involvement in the water community, there has not been a single
21 intervention request filed other than Cornman Tweedy. In his Rebuttal Testimony, Mr.
22 Johnson testified that “[i]n my experience, water and wastewater utilities actively protect
23 their interests when facing perceived financial harm or when their business interests are
24 at risk.”⁷⁶ The facts simply do not support AWC’s assertion that a decision in this case
25 will be precedent-setting or that it will adversely impact 270+ water companies in Arizona.

26 ⁷³ Reporter’s Transcript of Proceedings (Filed October 17, 2011) in Docket W-01445A-03-0559 at 39, lines
27 10-21 (emphasis added).

⁷⁴ AWC Post-Hearing Brief at 33, lines 4-7.

⁷⁵ AWC Post-Hearing Brief at 33, lines 13-15.

⁷⁶ Exhibit CT-109 (Ernest Johnson Rebuttal Testimony) at 22, lines 19-21.

1 Henny Penny is a folkloric creature who believed that the sky was falling based
2 upon a hysterical and mistaken belief that disaster was imminent. In the same way, AWC
3 is crying “the sky is falling” when it argues that excluding the Cornman Tweedy Property
4 from its CC&N “would result in ever-changing and uncertain CC&N configurations that
5 would open and close over time depending on local demands and economic conditions,
6 despite the fact that a utility is providing safe, adequate and reliable service.”⁷⁷ There is
7 no credible and tangible evidence in the record that would remotely support such a
8 hysterical prediction of the future based upon a grant of the relief requested by Cornman
9 Tweedy in this case. Cornman Tweedy desires that its property be served by a utility that
10 can provide integrated water and wastewater service. The record has been fully developed
11 regarding all of the reasons why this is so. There is no need for service at this time and,
12 of course, AWC is not providing service to the Cornman Tweedy Property. For these
13 reasons, the Commission directed the administrative law judge to determine, in the context
14 of the circumstances of this case, “whether Arizona Water is providing reasonable service
15 if it is not providing integrated water and wastewater services.”⁷⁸ The decision in this case
16 will be limited to this docket and these parties, not to the state generally.

17 AWC acknowledges that the issue raised by the Commission in this case is
18 unique.⁷⁹ Yet somehow, AWC witness Paul Walker knows that an order excluding the
19 Cornman Tweedy Property from AWC’s CC&N will cause a situation where
20 “...integrated municipal providers will target unserved CC&N areas for deletion;
21 developers with plans in water only CC&Ns will also likely do the same; and, frankly,
22 integrated providers will likely start looking at CC&N areas bordering theirs, serviced by
23 water-only providers, and seriously considering making similar filings.”⁸⁰ This is rank
24 speculation without a shred of support in the record. Mr. Johnson provided a much more
25 reasonable perspective on the likely effect:

26 ⁷⁷ AWC Post-Hearing Brief at 33, lines 1-2.

27 ⁷⁸ Reporter’s Transcript of Proceedings (Filed October 17, 2011) in Docket W-01445A-03-0559 at 39, lines
10-21 (emphasis added).

28 ⁷⁹ AWC Post-Hearing Brief at 33, line 9.

⁸⁰ AWC Post-Hearing Brief at 34, lines 8-12.

1 [M]ost private utilities serving in the more populated growth areas of the
2 state already provide integrated water and wastewater service. There has
3 been substantial consolidation within the industry over the past decade with
4 utilities such as Epcor Water, Global Water and Liberty Utilities acquiring
5 smaller stand-alone water and wastewater companies. Thus, I do not believe
6 that a decision to exclude the Cornman Tweedy property would cause alarm
7 among the integrated providers such as Epcor Water Arizona, Global
8 Utilities, Liberty Utilities, Johnson Utilities and the Robson utilities. In fact,
9 these companies may even welcome a decision that would advance the
10 integration of water and wastewater services. In addition, new applications
11 for CC&N's to serve new developments now typically address both water
12 and wastewater services, as in the cases of the Woodruff utilities, the Perkins
13 Mountain utilities, and Southwest Environmental Utilities, to name a few.⁸¹

14 AWC argues that deletion of the Cornman Tweedy Property from AWC's CC&N
15 "so that Picacho Water can serve an isolated peninsula of land that protrudes into and is
16 surrounded by Arizona Water Company's water system would result in inefficiencies,
17 needless duplication of water facilities, a loss of reliability and the loss of economies of
18 regional scale."⁸² To the contrary, the evidence shows that none of things would occur,
19 and that failing to exclude the Cornman Tweedy Property from AWC's CC&N will result
20 in substantial and unnecessary infrastructure costs and a loss of reliability.⁸³ As discussed
21 in Cornman Tweedy's Opening Post-Hearing Brief, if AWC is the water provider for the
22 Cornman Tweedy Property, EJ Ranch will be split into two halves—the north half served
23 by AWC and the south half which will be served by Picacho Water Company. This would
24 necessitate two separate water campuses to serve EJ Ranch instead of a single water
25 campus which would increase infrastructure costs to the developer and ultimately increase
26 water rates to the residents. Dr. Fred Goldman, testified that allowing AWC to serve the
27 Cornman Tweedy Property would add approximately \$4 million in costs that future rate
28 payers will be forced to bear for water service. He testified that these added costs include
construction of extra wells, construction of extra water storage and booster pump capacity,
additional land acquisition costs and design costs, costs for an additional pressure zone,

⁸¹ Exhibit CT-109 (Johnson Rebuttal, Remand II) at 22-23.

⁸² AWC Post-Hearing Brief at 34, lines 18-23.

⁸³ Exhibit CT-105 (Goldman Direct, Remand) at 4.

1 time delays and lost economies of scale.⁸⁴

2 Regarding AWC's assertion that there will be a "loss of economies of regional
3 scale," Dr. Goldman testified that any economies of scale associated with including the
4 Cornman Tweedy Property in AWC's CC&N would not even be measurable.⁸⁵ However,
5 Dr. Goldman testified that there would be substantial benefits to someday including the
6 1,138-acre Cornman Tweedy property in the approximately 4,500-acre existing
7 certificated territory of Picacho Water Company:

8 The eventual inclusion of the Cornman Tweedy property would increase the
9 size of the existing Picacho Water Company CC&N by approximately 25%.
10 An increase of 25% would significantly improve the reliability and efficiency
11 of the Picacho Water Company water system. The economies of scale would
be very noticeable....⁸⁶

12 AWC argues that excluding the Cornman Tweedy Property from its CC&N would
13 injure AWC "because Arizona Water Company would be left to develop and operate a
14 water system that surrounds the Cornman Tweedy property, but with that property served
15 by a separate stand-alone water system lacking the capacity, resources and scale of
16 operations that Arizona Water Company brings to its CC&N."⁸⁷ This argument is without
17 merit for at least three reasons. First, Picacho Water Company already holds the CC&N
18 to serve south of the southern boundary of AWC's CC&N in this area, so AWC will have
19 to develop and operate a water system around Picacho Water Company no matter what
20 happens in this case. Second, commenting on the testimony of Mr. Schneider, Dr.
21 Goldman testified that the Cornman Tweedy Property represents only one-third of one
22 percent of AWC's Pinal Valley planning area⁸⁸ and that "[i]t is inconceivable that
23 eliminating the 1,138-acre Cornman Tweedy property from the AWC certificated area
24 would result in any noticeable loss of reliability or efficiency to AWC's operations. Any
25 economies of scale would not even be measurable."⁸⁹ Third, there is no evidence in the

26 ⁸⁴ Cornman Tweedy Opening Post-Hearing Brief at 9-13.

27 ⁸⁵ Exhibit CT-106 (Goldman Rebuttal, Remand) at 2, lines 6-7.

28 ⁸⁶ Exhibit CT-106 (Goldman Rebuttal, Remand) at 2, lines 10-14.

⁸⁷ AWC Post-Hearing Brief at 34-35.

⁸⁸ Exhibit CT-107 (Goldman Rebuttal Testimony, Remand II) at 3, lines 23-25.

⁸⁹ Exhibit CT-106 (Goldman Rebuttal Testimony, Remand) at 2, lines 4-7.

1 record that an integrated or stand-alone water provider serving the Cornman Tweedy
2 Property would lack capacity, resources or scale of operations. Moreover, even is the
3 assertion was true, it is not clear how such a lack of capacity, resources and scale of
4 operations would harm AWC if AWC is not the entity which is providing water service to
5 the Cornman Tweedy Property.

6 AWC argues that excluding the Cornman Tweedy Property from its CC&N “would
7 disrupt the orderly interconnection of Arizona Water Company’s Pinal Valley CCC&N
8 areas and the provision of service to neighboring properties.”⁹⁰ This is simply contradicted
9 by the testimony of AWC’s own witness at the hearing. Asked about the interconnection
10 of AWC’s Coolidge and Casa Grande systems, witness Schneider testified that the systems
11 are already interconnected “through a six-inch water main located along McCartney Road,
12 which is north of the project here, Cornman Tweedy.”⁹¹ Further, when the judge asked
13 Mr. Schneider “[w]ould it make a difference in terms of how your mains would run if the
14 Cornman Tweedy property were excluded,” he responded, “No. We would probably still
15 run a water main down Florence Boulevard.”⁹²

16 **F. There is No Need for Service.**

17 AWC states that “Cornman Tweedy places great emphasis on the purported lack of
18 need for service to its property to justify deleting apportion of Arizona Water Company’s
19 CC&N.”⁹³ Cornman Tweedy would first point out that the Commission also emphasized
20 the issue of service when in Finding of Fact 100, it observed that “[t]here may not be a
21 current need or necessity for water service in the portions of the extension area that are
22 owned by Cornman,” and that “[this issue bears] further examination and may have some
23 relevance to the best interests of the area ultimately to be served.” Second, AWC’s use of
24 the word “purported” lack of a need for service implies that AWC believes that there
25 actually is a need for service but somehow Cornman Tweedy is hiding that fact from the

26 ⁹⁰ AWC Post-Hearing Brief at 35, lines 2-4.

27 ⁹¹ Hearing Transcript Vol. III at 544, lines 5-13. Mr. Schneider also testified at pages 544-545 that the
interconnection was in service in 2008 and the systems were combined in 2010 through ADEQ permitting.

28 ⁹² Hearing Transcript Vol. III at 553, lines 21-25.

⁹³ AWC Post-Hearing Brief at 36, lines 19-20.

Commission. This, of course, is contrary to the evidence in the case.

Cornman Tweedy acquired the first parcel of land within the Cornman Tweedy Property on December 8, 2004, more than 11 years ago.⁹⁴ In his Direct Testimony dated January 4, 2008, Mr. Poulos included as Exhibit 3 a series of 21 photographs showing the Cornman Tweedy property and the immediate vicinity taken on December 26, 2007.⁹⁵ The photos show the Cornman Tweedy property as undeveloped farmland and Mr. Poulos testified at that time that there were “no plans to develop the EJ Ranch Property” and that the property had been “indefinitely shelved.”⁹⁶ A little more than eight years later, Mr. Soriano testified that the photos still accurately depict the condition of the Cornman Tweedy Property today,⁹⁷ and that there are still no plans to develop the Cornman Tweedy Property in the foreseeable future.⁹⁸ Clearly, the facts establish that there is no need for water service.

AWC argues that the lack of a need for service is not a basis for deletion under *James P. Paul*.⁹⁹ While this may be true, for reasons that have been extensively discussed herein, the standard of review in this case is not *James P. Paul*. Thus, AWC’s reliance on that case is misplaced.

AWC next argues that the Commission already found that there was a need for service in Decision 66893. While this may be true in a purely technical sense, it does not fairly convey the story. Mr. Poulos explained in his Direct Testimony:

On August 12, 2003, [AWC] filed an application with the Commission to extend its CC&N to include eleven square miles—or more than 7,000 acres—in Township 6 South, Range 7 east, G&SRB&M, in Pinal county, Arizona (the “Extension Area”). The Extension Area is shown on the map attached to my testimony as Exhibit 2. AWC’s application was based on only two requests for service—one for a property called Post Ranch which

⁹⁴ Exhibit CT-102 (Poulos Direct Testimony) at 6, lines 23-24.

⁹⁵ Exhibit CT-102 (Poulos Direct Testimony), Exhibit 3. The Poulos Direct Testimony was adopted by Mr. Soriano.

⁹⁶ Exhibit CT-102 (Poulos Direct Testimony) at 10, lines 24-25.

⁹⁷ Hearing Transcript Vol. I at 70, lines 9-12.

⁹⁸ *Id.* at 73, lines 2-14.

⁹⁹ AWC Post-Hearing Brief at 36-37.

1 consisted of approximately 480 acres and another for property called
2 Florence Country Estates which consisted of approximately 240 acres.¹⁰⁰

3 Thus, the “need” in AWC’s application was supported by requests for service from
4 owners of less than 10% of the property included in the extension request. Today, the
5 Commission would absolutely not grant such a large request for an extension without
6 requests for service from a majority of the landowners. Cornman Tweedy would also
7 point out that there is still not a need for service in much of the extension area today,
8 including the Cornman Tweedy Property.¹⁰¹

9 In addition, AWC’s argument ignores the Finding of Fact 100 in Decision 69722
10 wherein the Commission specifically found that “[t]here may not be a current need or
11 necessity for water service in the portions of the extension area that are owned by
12 Cornman. The Commission’s ruling in Decision 69722 supersedes any finding of need in
13 Decision 66893 with respect to the Cornman Tweedy Property.

14 AWC next argues that “while the Commission stated that there may not be a
15 ‘current need or necessity’ for service for the Cornman Tweedy property in Decision
16 69722, ... the evidence actually proves (and the Commission already found) that there is
17 a public need for water service in all of the Extended CC&N Area, ... which not only
18 includes the Cornman Tweedy property but nine other sections of land, including the
19 property adjoining the Cornman Tweedy Property.”¹⁰² This argument too must fail
20 because the Commission has expressly targeted this inquiry in Finding of Fact 104 to “the
21 overall public interest underlying service to the Cornman property,” and not the larger
22 extension area.

23 AWC argues that “it is undisputed that the Cornman Tweedy property will be
24 developed, and the only question, given that the area is still rebounding from the recession,
25 is by whom and when.”¹⁰³ However, this statement could apply to virtually any parcel of
26 property within the I-10 corridor from Tonopah to Eloy. It is hard to imagine the

27 ¹⁰⁰ Exhibit CT-102 (Poulos Direct) at 6, lines 15-22. The 240-acre Florence Country Estates is not part of
28 the Cornman Tweedy Property and it has still not developed, nor has the 480-acre Post ranch property.

¹⁰¹ Hearing Transcript Vol. III at 545-547.

¹⁰² AWC Post-Hearing Brief at 37-38.

¹⁰³ AWC Post-Hearing Brief at 39, lines 18-20.

1 Commission granting a CC&N to an applicant which states that the service area will be
2 developed some day, the only question is by whom and when.

3 AWC points out that Cornman Tweedy obtained an Extension of an Analysis of
4 Assured Water Supply ("AAWS") in January 2015, and in connection therewith, made
5 statements to the Arizona Department of Water Resources that Cornman Tweedy had
6 "made substantial capital investment in developing the land included in the analysis" and
7 had "made material progress in developing the land."¹⁰⁴ AWC argues that "although
8 Cornman Tweedy is representing to the Commission that the project is in the deep freeze,
9 it is simultaneously representing to the Department of Water Resources that it has made
10 substantial progress to develop the property."¹⁰⁵ However, Mr. Soriano explained during
11 questioning on cross-examination at the hearing how both statements are true without
12 negating the fact that there is no current need or necessity for water service on the
13 Cornman Tweedy Property:

14 Q. When the extension was granted, we go back to page 1 of Arizona Water
15 Company 11, and there are the findings and grant of the additional five
16 years, it states that the department has reviewed the application -- I am in
17 the second paragraph -- the department has reviewed the application for
18 extension and has determined that the analysis holder has made material
19 progress in developing the land. Do you see that?

20 A. Has made, yes.

21 Q. Okay. So you characterize that as that was pre-icebox, 10 years ago we did
22 that?

23 A. Correct.

24 Q. But wouldn't the department be looking for what is happening now in 2015
25 to base a current additional five-year extension?

26 A. No. There is a lot of work involved in getting the assurance done. And that
27 work is expensive. It is a lot of work on the part of the department. It is a
28 lot of work on the part of the developer. And they don't want to do it twice.
They don't want to do it twice for no reason. So if there is no reason to not

¹⁰⁴ AWC Post-Hearing Brief at 40, lines 10-15.

¹⁰⁵ AWC Post-Hearing Brief at 40, lines 20-23.

extend, they extend.

Q. All right. So you don't see those representations on your application as adopted by the department as being inconsistent with what you are telling the Commission today?

A. I think you saw on the application it clearly says has made, has made. And then in the department's letter, the sentence that you read says the holder has made. And we have owned that property since you know when, you know when we bought it. And we have, we have made progress and spent money in developing it.

Q. All right. But for purposes of the characterization of the current need for utility service and for purposes of a deletion proceeding, it is the icebox and nothing is happening, correct?

A. The property is in the icebox -- you asked two questions. One was for the purposes of a deletion proceeding. That's something you have labeled this. That's not how I see it. But then you also said that this is still in the icebox. And yes, I agree with you. This is still in the icebox.¹⁰⁶

Finally, AWC argues that “[d]eleting a CC&N based on nothing more than the whims of a new owner would undercut the sound public policy purposes of granting a CC&N.”¹⁰⁷ This statement unfairly mischaracterizes the facts and circumstances of this case, and the importance of the issues to be addressed herein. For substantive and material reasons that are amply documented in the record, Cornman Tweedy wants its property to be served by an integrated provider. Further, there is an opportunity here for an outcome that better serves the public interest. As Mr. Johnson explained in his Rejoinder Testimony:

Removal of the Cornman Tweedy Property from AWC’s CC&N remains the better regulatory outcome. Contrary to Mr. Walker’s assertion, the public interest is not best served by allowing AWC to hold the CC&N covering the Cornman Tweedy Property.

Efficiently utilizing scarce resources (groundwater and effluent) through an integrated water and wastewater provider is the most reasonable, practical, policy and public interest-based outcome that can come out of this proceeding. This proceeding affords the ACC the opportunity to clearly

¹⁰⁶ Hearing Transcript Vol. I at 81-83.

¹⁰⁷ AWC Post-Hearing Brief at 42, lines 3-4.

1 recognize that in the water challenged area affected by this proceeding,
2 maximizing the efficient use of both groundwater and effluent is providing
3 reasonable service to customers, and is the best public interest outcome. I
4 would add also that removing the Cornman Tweedy Property from AWC's
5 CC&N does not result in a decision today regarding the water service
6 provider for the property, but it leaves all options on the table for the
7 Commission once development proceeds at some future time.¹⁰⁸

8 **G. The Public Interest is Best Served by Excluding the Cornman Tweedy**
9 **Property from AWC's CC&N.**

10 AWC argues that Cornman Tweedy has failed to show any compelling public
11 interest justifying deletion of any portion of AWC's CC&N.¹⁰⁹ Instead, according to
12 AWC, "Cornman Tweedy has merely reiterated its tired, self-serving refrain that it does
13 not desire to have Arizona Water Company provide service to its property...." However,
14 AWC misrepresents the weight of the evidence in this case. The evidence in this case
15 establishes each of the following:

- 16 • There is no need and necessity for water service for the Cornman Tweedy
17 property at this time or in the foreseeable future, which is one of the issues
18 specifically identified by the Commission for examination in this case.
- 19 • Cornman Tweedy does not want water service from AWC, which is
20 another of the issues specifically identified by the Commission for
21 examination in this case.
- 22 • If AWC serves the Cornman Tweedy Property, then the EJ Ranch
23 property will be split between two water utilizes increasing infrastructure
24 costs for Cornman Tweedy and the public and causing time delays when
25 development occurs in the future. These increased costs result from:
 - 26 ▪ Construction of extra wells.
 - 27 ▪ Construction of extra water storage and booster pump capacity.
 - 28 ▪ Additional land acquisition cost and design costs.
 - Limitation of well siting options due to SCIP restrictions.
 - Additional pressure zone.
 - Time delays.
 - Lost economies of scale.

¹⁰⁸ Exhibit CT-110 (Johnson Rejoinder) at 4, lines 7-19.

¹⁰⁹ AWC Post-Hearing Brief at 42, lines 1-2.

- If AWC serves the Cornman Tweedy Property, Cornman Tweedy and the public will lose many benefits of utility service from an integrated water and wastewater provider, including:

- Integrated systems provide increased operational efficiencies and cost savings
- Integrated systems enable the water provider to assist the sewer provider in collecting past due balances.
- Integrated systems save money in the design and construction phases.
- Integrated systems increase efficiencies and flexibility in dealing with waste streams.
- Integrated systems improve the customer experience by providing “one-stop” shopping.
- Integrated systems maximize the use of reclaimed wastewater.

- AWC has not constructed any water infrastructure within the Cornman Tweedy Property
- AWC will suffer no material harm if the Cornman Tweedy Property is excluded from its CC&N.
- AWC cannot provide integrated water and wastewater service to the Cornman Tweedy Property because AWC does not hold the CC&N to provide sewer service to the property.

For all of these reasons, the public interest requires that the Cornman Tweedy Property be excluded from AWC’s CC&N at this time.

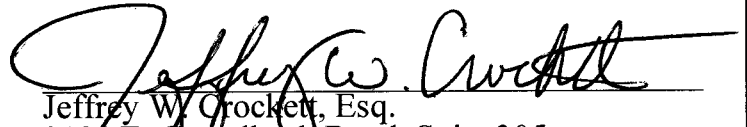
III. CONCLUSION

The evidence in this case shows that the public interest will best be served by excluding the Cornman Tweedy Property from AWC’s CC&N at this time. It is undisputed that there is no need and necessity for water service for the Cornman Tweedy property at this time or in the foreseeable future. Moreover, Cornman Tweedy does not want water service from AWC for a number of legitimate and compelling reasons as described herein and in the testimony of the Cornman Tweedy witnesses. Specifically, if AWC serves the Cornman Tweedy Property, then the EJ Ranch property will be split

1 between two water providers thereby increasing infrastructure costs for Cornman Tweedy
2 and the public and causing time delays when development does occur in the future. More
3 importantly, if AWC serves the Cornman Tweedy Property, then Cornman Tweedy and
4 the public will lose the recognized benefits of utility service from an integrated water and
5 wastewater provider. The inability to receive integrated water and wastewater service is
6 unreasonable under the circumstances of this case. Thus, the Cornman Tweedy Property
7 should be excluded from AWC's CC&N pursuant to A.R.S. § 40-252 in accordance with
8 the directives contained in Decision 69722. AWC has not constructed any water
9 infrastructure within the Cornman Tweedy Property and it will suffer no material harm if
10 the Cornman Tweedy Property is excluded from its CC&N.

11 RESPECTFULLY submitted this 6th day of May, 2016.

12 CROCKETT LAW GROUP PLLC

13 
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15 2198 E. Camelback Road, Suite 305
16 Phoenix, Arizona 85016-4747
Attorney for Cornman Tweedy 560, LLC

17 ORIGINAL plus thirteen (13) copies filed
this 6th day of May, 2016, with:

18 Docket Control
19 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
20 Phoenix, Arizona 85007

21 COPY of the foregoing hand-delivered
this 11th day of May, 2016, to:

22 Sarah N. Harpring, Administrative Law Judge
23 Hearing Division
24 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
25 Phoenix, Arizona 85007

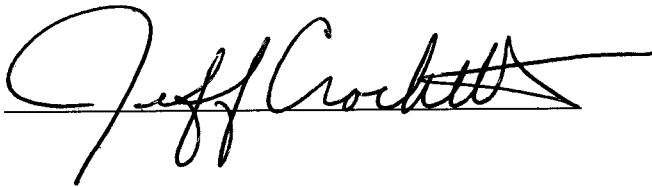
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1 Thomas M. Broderick, Director
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6 COPY of the foregoing mailed
7 this 6th day of May, 2016, to:

8 Steven A. Hirsch, Esq.
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ATTACHMENT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 17 1968

E. T. "EDDIE" WILLIAMS, JR.

Chairman

DICK HERBERT

Commissioner

MILTON J. HUSKY

Commissioner

DOCKETED BY

al

IN THE MATTER OF THE APPLICATION OF JAMES P. PAUL AND BETTY J. PAUL, A CO-PARTNERSHIP DBA JAMES P. PAUL WATER COMPANY, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A DOMESTIC WATER UTILITY IN THE AREA DESCRIBED AS SECTIONS 10, 11, AND 14, TOWNSHIP 4 NORTH, RANGE 4 EAST, G&SRB&M, MARICOPA COUNTY, ARIZONA.

DOCKET NO. U-2055

DECISION NO. 39520

OPINION AND ORDER

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission on May 23, 1968 sitting in Phoenix, Arizona.

Applicants were represented by their attorney, Frank Haze Burch, and a letter protesting the inclusion of its property was submitted by the attorney for D. C. Ranch Company.

From the evidence adduced, the Commission is of the opinion that the applicants have complied with the laws of the State of Arizona and the rules and regulations of the Commission for the issuance of an order preliminary to the issuance of a certificate of convenience and necessity as prayed for and pending compliance with the rules and regulations necessary to the issuance of a certificate of convenience and necessity.

WHEREFORE, IT IS ORDERED that the application for the order preliminary to the issuance of a certificate of convenience and necessity is hereby approved, and this order shall constitute and be an order preliminary to the issuance of the certificate of convenience and necessity authorizing applicants to construct, operate and maintain, in conformity with the laws of the State of Arizona and the rules and regulations of the Commission, a public water utility within the area described as all of Sections 10 and 11 and all of Section 14, EXCEPT the Southeast Quarter ($SE\frac{1}{4}$) and the South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) and the Northeast Quarter ($NE\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of

DOCKET NO. U-2055

DECISION NO. 39520

Section 14, Township 4 North, Range 4 East, G&SRB&M, Maricopa County, Arizona.

IT IS FURTHER ORDERED THAT THE rates approved and which shall apply are as follows:

MONTHLY
SERVICE CHARTES

5/8"	Meters	\$ 4.00
3/4"	"	5.00
1"	"	7.00
1 1/2"	"	12.00
2"	"	18.00
No water supplied with Service Charge		

CONSUMPTION CHARGES

\$0.75 per 1,000 gallons for all water consumed.

All other rates and charges shall be in conformance with the Rules and Regulations Relating to the Operation of Domestic Water Utility Companies as adopted by this Commission on December 9, 1965.

IT IS FURTHER ORDERED that upon receipt of written approval from the Arizona State Health Department an order shall issue granting applicants herein a certificate of convenience and necessity.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, CHARLES D. HADLEY, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 17th day of June, 1968.

Charles D. Hadley
CHARLES D. HADLEY
EXECUTIVE SECRETARY

E. T. Edwin Williams Jr.
CHAIRMAN

COMMISSIONER

Milton H. Hickey
COMMISSIONER

ATTACHMENT 2

BEFORE THE ARIZONA CORPORATION COMMISSION

DICK HERBERT
Chairman
CHARLES H. GARLAND
Commissioner
RUSSELL WILLIAMS
Commissioner

Arizona Corporation Commission
DOCKETED
OCT 1 1970

IN THE MATTER OF THE APPLICATION OF JAMES P. PAUL AND BETTY J. PAUL, A CO-PARTNERSHIP DBA JAMES P. PAUL WATER COMPANY, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A DOMESTIC WATER UTILITY IN THE AREA DESCRIBED AS SECTIONS 10, 11 AND 14, TOWNSHIP 4 NORTH, RANGE 4 EAST, G&SRB&M, MARICOPA COUNTY, ARIZONA.

DOCKET NO. U-2055

DECISION NO. 40884

OPINION AND ORDER

BY THE COMMISSION:

On June 17, 1968 this Commission by Decision No. 39520 issued an order preliminary to the issuance of the certificate of convenience and necessity to James P. Paul and Betty J. Paul, a co-partnership dba James P. Paul Water Company, and stating that the certificate of convenience and necessity would issue upon the filing of the approval of the State Health Department. This approval was filed in the office of this Commission on September 16, 1970.

WHEREFORE, IT IS ORDERED that this order shall constitute and be a certificate of convenience and necessity, pursuant to §40-281, Arizona Revised Statutes, authorizing applicants herein to construct, operate and maintain a domestic water utility in the area described as all of Sections 10 and 11 and all of Section 14, EXCEPT the Southeast Quarter (SE $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) and the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 14, Township 4 North, Range 4 East, G&SRB&M, Maricopa County, Arizona.

IT IS FURTHER ORDERED that the rates approved and which shall apply are as follows:

MONTHLY SERVICE CHARGES

5/8" Meters	\$ 4.00
3/4" "	5.00
1" "	7.00
1 1/2" "	12.00
2" "	18.00
No water supplied with Service Charge	

CONSUMPTION CHARGE

\$0.75 per 1,000 gallons for all water consumed.

DOCKET NO. U-2055

DECISION NO. 40884

All other rates and charges shall be in conformance with the Rules and Regulations Relating to the Operation of Domestic Water Utility Companies as adopted by this Commission on December 9, 1965.

IT IS FURTHER ORDERED that all service connections shall be metered at the time installation is made.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

Charles D. Hadley
IN WITNESS WHEREOF, I, CHARLES D. HADLEY, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 1st day of October, 1970.